



Department of Health & Human  
Services  
Office for Civil Rights

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Policy Guidance to Federal Financial  
Assistance Recipients Regarding Title VI  
Prohibition Against National Origin  
Discrimination Affecting “Limited English  
Proficient Persons” (LEP)

# Why was the LEP Guidance revised?

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To respond to:

- Public comments
- OMB Report recommending uniform and consistency in Federal Agency guidance
- DOJ directives

# What Does the Revised Guidance Do?

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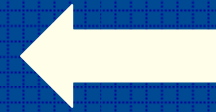
- *Confirms commitment to Title VI Language Access*
- *Consistency and Uniformity*
- *Clarity in Application to HHS Context*

## *Clarity in Application to HHS Context, including...*

- How the 4 Factors Apply
- Friends and Family Members as Interpreters
- Translation of Documents
- Technical Assistance to Encourage Voluntary Compliance



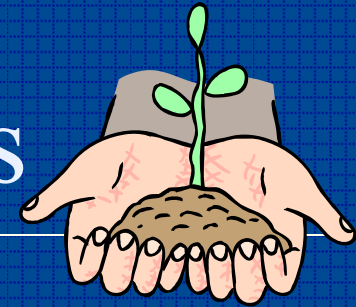
# Topics



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- **Background**
  - **Who must comply?**
  - **LEP defined**
  - **What must recipients do?**
  - **The Four Factor Analysis**
  - **Elements of an effective language assistance plan**
  - **Enforcement and voluntary compliance**

# In the United States

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**More than 10.5 million adults speak little or no English (4 million more than in 1990)**

- More than 6.6 million Spanish speakers (over 3.28% of population)**
- More than 1.2 million speak Indo-European languages**
- Over 1.4 million speak an Asian or Pacific Islander language**

# Title VI of the Civil Rights Act

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*No person in the United States shall on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.*

- Section 601 of Title VI of the Civil Rights Act of 1964  
42 U.S.C. Section 2000d et. seq.

# HHS Title VI Regulation

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*Recipients may not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color or national origin...*

- 45 C.F.R. Section 80.3 (b)(2) The HHS regulation implementing Title VI (Sec. 601 & 602).



# The Supreme Court Decision

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*Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national-origin discrimination.*

- Lau v Nichols, 1974

# HHS LEP Guidance

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- **August 2000, HHS issues Guidance**
  - **Following E.O. 13166 which required agencies to issue guidance and develop plans to improve access**
- **February 2002, HHS republishes guidance in response to request by DOJ**
- **July 2002, DOJ republishes its guidance, directing other agencies to revise guidance to promote consistency and uniformity, and to better advise recipients and LEP persons**

# Revised HHS LEP Policy Guidance

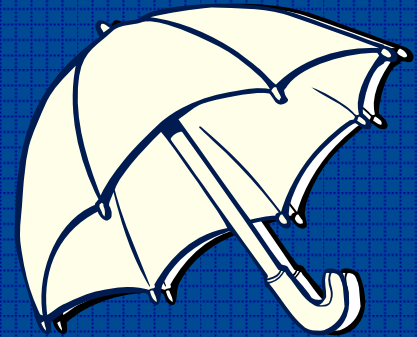
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**Published in the Federal Register  
8/8/03**

**Copies are available on OCR's website  
[www.hhs.gov/ocr](http://www.hhs.gov/ocr)**

# Who Is Covered?

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All recipients of HHS Federal financial assistance, either directly or indirectly, through a grant, contract or subcontract.

# Common Types Of Federal Financial Assistance

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- **Loans**
- **Grants**
- **Grants or loans of federal property**
- **Use of equipment & donations of surplus property**
- **Training**
- **Details of Federal personnel**
- **Any other agreement or contract to provide assistance**

# Examples of Common *Recipients*

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- Hospitals, nursing homes, home health agencies, managed care organizations
- State, county and local welfare agencies
- Universities and other health or social service research programs
- Programs for families, youth and children

# More Examples of *Recipients*

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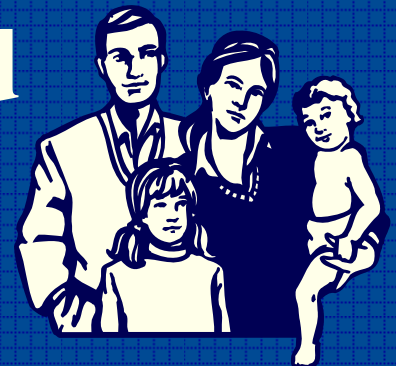


- **Head Start programs**
- **Physicians and other providers who receive Federal financial assistance from HHS**

# Who Is A Limited English Proficient (LEP) Person?

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**An LEP individual is a person who does not speak English as their primary language and who has a limited ability to read, write, speak or understand English.**





# What Must Recipients Do?

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- **Under Title VI and its implementing regulations, recipients must take reasonable steps to ensure meaningful access to their programs, activities and services for LEP persons.**

# Using the Four-Factor Analysis to Determine the Recipient's Obligation

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1. *Number or Proportion of LEP Persons Eligible to be Served or Likely to be Affected by the Program or Service*
2. *Frequency of Contact*
3. *Nature and Importance of the Program, Activity, or Service*
4. *Costs and Resources Available*

# Factor 1: Number or Proportion of LEP Persons ...

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- How many LEP persons are eligible to be served, or likely to be affected, by a recipient program or activity?
  - Potential sources of data may include:
    - encounter data
    - Data from Census, school systems, state and local government
    - community organizations

# **Factor 1: Number or Proportion of LEP Persons ...**

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Also consider:

- **Does the program serve minors whose parents/guardians are LEP?**
- **Are there populations who may be underserved because of language barriers ?**

## **Factor 2: Frequency With Which LEP Individuals Come in Contact With Program, Activity or Service**

- How often is a particular language encountered?**

## **Factor 3: Nature and Importance of the Program, Activity, or Service**

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- How important is the recipient's activity, information, service, or program?**
- What are the possible consequences if effective communication is not achieved?**
- Could denial or delay of access to services or information have serious life-threatening implications?**

## **Factor 4: Costs and Resources Available to the Recipient**

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- What are the reasonable costs of providing language assistance services?**
- What resources are available?**

# Ways to Provide Cost-Effective Language Services

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- Information sharing.
- Training bilingual staff.
- Telephone & video conference services.
- Pooling resources, standardizing documents.
- Using sufficiently qualified translators and interpreters to avoid errors / unnecessary costs.
- Centralizing services.
- Formalized use of qualified volunteers.



# Applying the Four Factors

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- Will be based on what is both necessary and reasonable in light of the four-factor analysis

# Applying the 4- Factors: Examples

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**A hospital emergency room in a city with a significant Hmong population may need immediately available oral interpreters and may want to give serious consideration to hiring some bilingual staff.**

# Applying the 4- Factors: Examples

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**A physician's practice which encounters one LEP Hmong patient per month on a walk-in basis may want to use a telephone interpreter service.**

# Applying the 4- Factors: Examples

**A dentist in an almost exclusively English-speaking neighborhood who has rarely encountered a patient who did not speak English and has never encountered a Hmong-speaking patient may not need, pursuant solely to Title VI, to provide language services for a LEP Hmong individual who comes in for a dental cleaning.**

# Two Types of Language Assistance

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- **Oral Interpretation:** either in person or via telephone interpretation service
- **Written translation:** can range from translation of entire document to translation of a short description of a document

# Selecting Language Assistance Services

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**There are two major considerations to be addressed in selecting services:**

- Competency**
- Timeliness**

# Interpreter Competency

**The recipient should take reasonable steps to assess that the interpreter is able to:**

- **Demonstrate proficiency in both English and in the other language**
- **Demonstrate knowledge of specialized terms or concepts appropriate to the need**
- **Demonstrate an understanding of the need for confidentiality and impartiality**
- **Understand the role of interpreter without deviating to other roles**

# Timeliness

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- **When language assistance is needed and is reasonable, it should be provided in a timely manner—e.g., at a time and place that avoids the effective denial or delay of the service, benefit, or right at issue.**



# Selecting Language Assistance Services

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## Options for Oral Language Services:

- Bilingual Staff
- Staff Interpreters
- Contractors
- Telephone Lines & Video Teleconferencing
- Community Volunteers

# Family Members or Friends as Interpreters

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- **Meaningful access**
- **Respect for LEP persons choices**

# Use of Family Members or Friends

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- When Title VI requires that language services be provided, recipients should:
  - Inform the LEP Person that interpreter can be provided at no cost
  - Not require LEP persons to provide own interpreter
  - Not plan to rely on family members or friends as interpreters
  - Evaluate whether, because of special concerns, interpreter should be provided in any case

# Use of Family Members or Friends: Special Concerns

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Providers should respect LEP Persons' desire to use an interpreter of their own choosing instead of free language assistance expressly offered by the recipient, subject to:

- Issues of competence, appropriateness, conflicts of interests, and confidentiality
- Heightened caution when a LEP person asks a minor child to serve as an interpreter

# Written Translations

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**Vital written materials should be translated.**

- Whether a document is “vital” depends upon the importance of the program, information, encounter, or service involved and consequences to the LEP person if the information is not provided accurately or in a timely manner.**

# Vital Written Materials Could Include, for instance...

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- Consent and complaint forms
- Intake forms with the potential for important consequences
- Written notices of eligibility criteria, right, denial, loss or decrease in benefits or services, actions affecting parental custody or child support
- Notice advising LEP persons of free language assistance
- Written competency tests for license, job or skills where English is not required
- Applications to participate in a program or activity or to receive benefits or services

## Non-vital Documents Could Include, for instance...

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- Hospital menus
- Third party documents, forms or pamphlets by a recipient as a public service
- For a non-governmental recipient, government documents and forms
- Large Document such as enrollment handbooks (though vital information contained in large documents may need to be translated)
- General Information about the program intended for informational purposes only

# Written Translations: Into What Languages Should Documents be Translated?

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- Distinction should be made between languages that are frequently-encountered and less commonly-encountered languages



# Translation Options That May Be Considered

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- Use certified translators
- Use of independent translator to “check” the translation for extremely critical documents
- Use independent translator to translate “back” into English
- Understand the expected reading level of the audience’s vocabulary and phraseology
- Use community organizations to consider whether a document is written at a good level

# Written Translations

## “Safe Harbor”

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- Meeting the “Safe Harbor” outlined in the Guidance will be seen as strong evidence of compliance
- If the recipient does not meet the circumstances in the safe harbor, it does not mean there is non-compliance

# “Safe Harbors”

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(A) All vital documents are translated for each LEP group of 5% or 1000 (whichever is less) of the eligible population

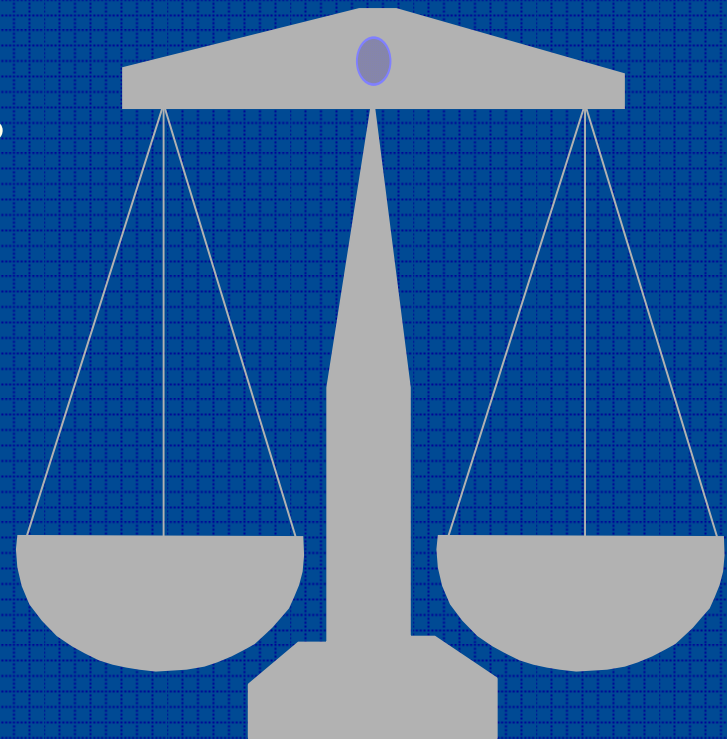
OR

(B) If there are fewer than 50 persons in a language group that reaches the 5% in (A), a recipient can instead provide written notice in the primary language of the right to receive oral interpretation of those written materials, free of cost

# Technical Assistance And Voluntary Compliance for Title VI

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- Complaint Investigations
- Compliance Reviews
- Voluntary Compliance
- Technical Assistance



# Designing Effective Language Assistance Plans - Five Steps

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- 1. Identifying LEP individuals**
- 2. Identifying methods of language assistance**
- 3. Training staff**
- 4. Providing notice of language services**
- 5. Monitoring and updating LEP Plan**

# Step 1

## Identifying LEP Individuals

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- **Ways to identify LEP persons:**
  - Language identification cards
  - Encounter data
  - Posted notices

Resource:

- “I speak card,” Department of Commerce, Bureau of the Census:  
<http://www.usdoj.gov/crt/cor/Pubs/ISpeakCards.pdf>

# Step 2

## Language Assistance Measures

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May include information on:

- Types of language assistance available
- How staff can obtain those services
- How to respond to LEP callers
- How to respond to written communication from LEP persons
- How to respond to LEP individuals who have in-person contact
- How to ensure competency of language assistance

# Step 3

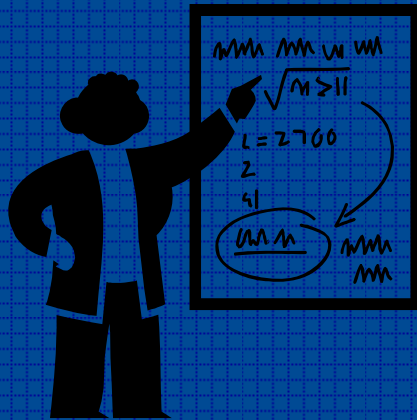
## Training Staff

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May include training to ensure that staff:

- Know about LEP policies and procedures
- Can work effectively with in-person and telephone interpreters





## Step 4



# Providing Notice to LEP Persons

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Examples include:

- Post signs in intake areas
  - <http://www.ssa.gov/multilanguage/langlist1.html>
- Announce language services in outreach materials
- Use a telephone voicemail menu
- Provide notices on non-English radio and T.V. stations
- Work with community-based organizations & stakeholders

# Step 5

## Monitoring and Updating the LEP Plan

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Consider assessing changes in:

- Frequency of encounters with LEP language groups
- Current eligible LEP populations
- Availability of resources
- Whether existing assistance is meeting the needs of LEP persons

# Final Points for An Effective Plan

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Clear Goals



Management Accountability



Consider Community Input

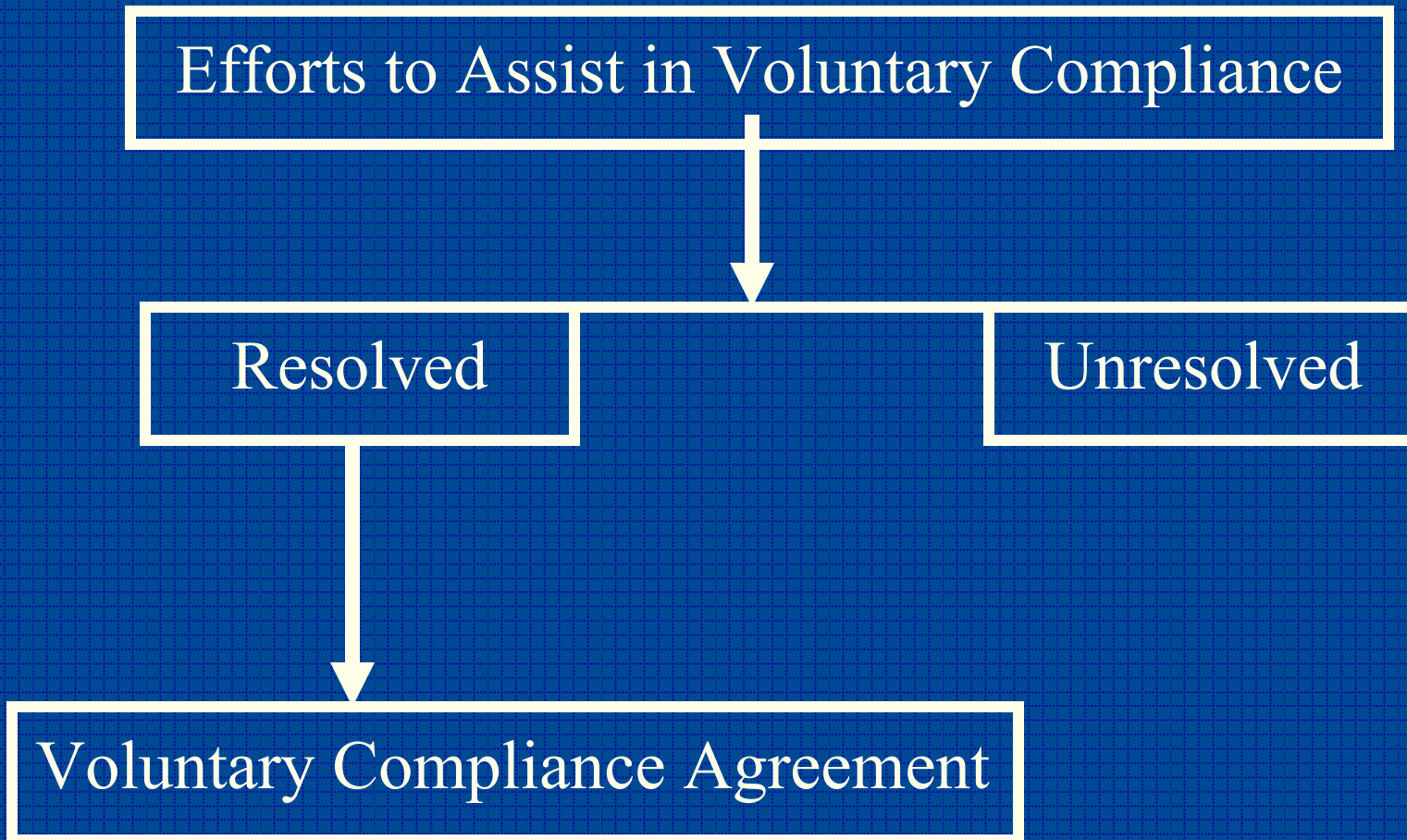
# How Is Title VI Enforced?

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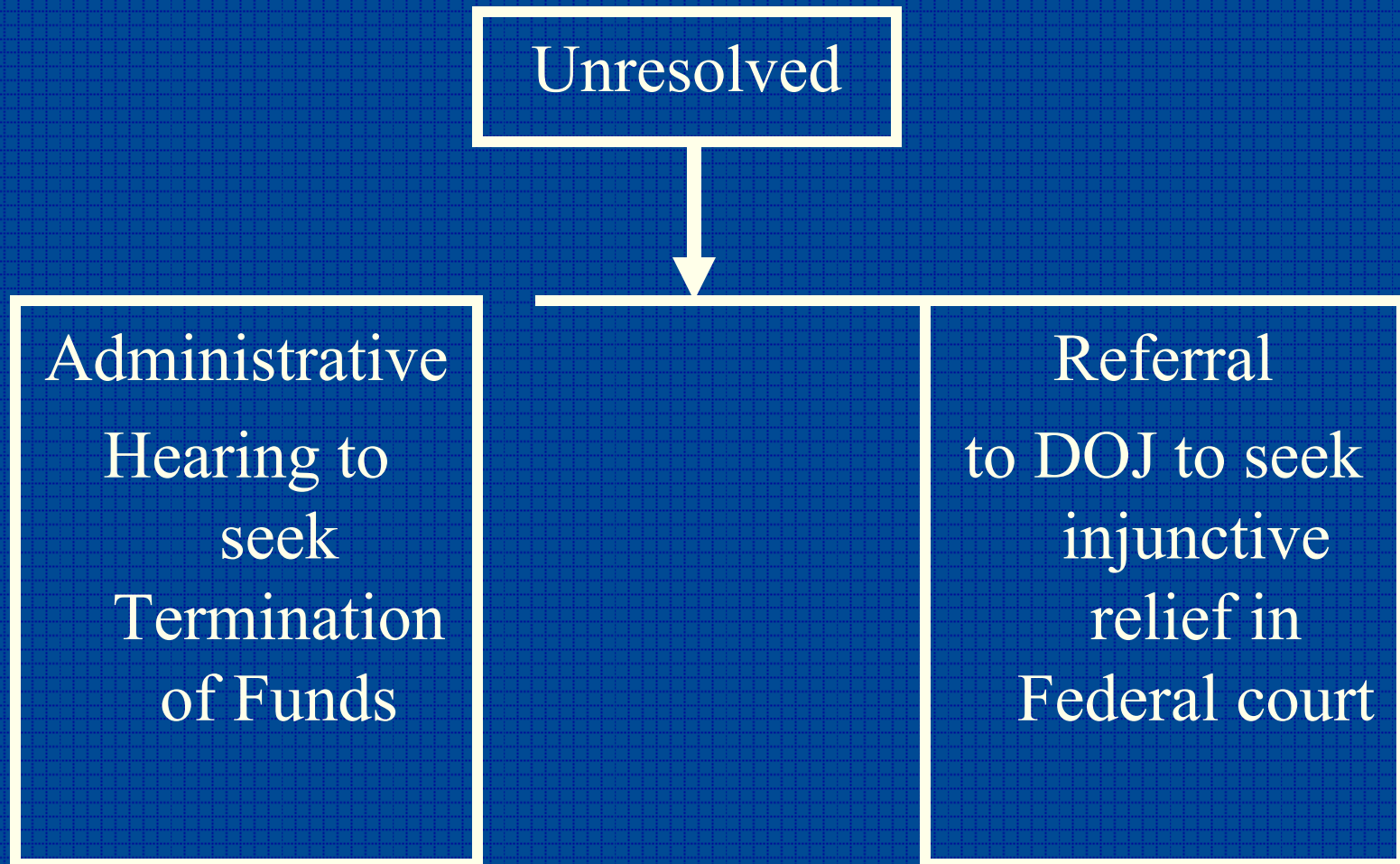
# How is Title VI enforced after noncompliance is found?

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# How Are Laws Enforced?

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# Technical Assistance

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- Translated Materials
- Training
- Information on Promising Practices
- Grants
- Model Demonstration Funds

# HHS Commitment

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- Increase access to services and programs
- Eliminate racial and ethnic health disparities and close the health care gap



# Website Information

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[www.hhs.gov/ocr/](http://www.hhs.gov/ocr/)

[www.lep.gov](http://www.lep.gov)

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